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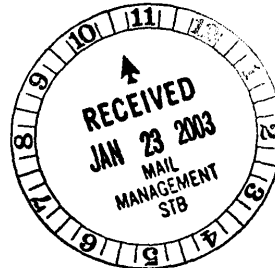
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207103



Hon. Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington D.C. 20423

Re: Finance Docket No. 34281: LB Railco, Inc. - Lease and Operation Exemption -
Providence and Worcester Railway Company

Dear Secretary Williams:

I am counsel to the Town of Millbury ("Town"). I am writing in response to the letter to the Surface Transportation Board ("Board") dated January 14, 2003 from John F. McHugh, Esq., counsel to LB Railco, Inc. In the letter, LB Railco requests a further extension of time until January 31, 2003 to respond to pending motions and submissions, and also seeks a "directive" from the Board that "no submissions served or received by the Board after [January 24, 2003] need be responded to nor will they be considered by the Board."

The Town has no objection to the Board granting the requested further extension of time to LB Railco for its response to the Town's Petition to Revoke Exemption (and for its response to filings by other parties to this proceeding). The Town does, however, object to LB Railco's request for a "directive" that would seemingly preclude any further filings in this matter, without regard to whether such filings would ordinarily be allowed by the Board's rules. The Town respectfully suggests that the Board's rules are sufficient to address the appropriateness of any future filings and the manner in which parties to this proceeding may respond to such filings.

KOPELMAN AND PAIGE, P.C.

Hon. Vernon A. Williams
Secretary, Surface Transportation Board
January 16, 2003
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The cut-off date of January 24, 2003 sought by LB Railco for all submissions concerning its Notice of Exemption would seemingly preclude filings by additional parties. This would be inconsistent with the Board's regulations invoked by LB Railco within its Notice of Exemption, 49 CFR 1150.41 *et seq.*, which do not impose a deadline on the filing of a petition to revoke a Notice of Exemption. Further, if a Notice contains false or misleading information, the Exemption is void *ab initio*. 49 CFR 1150.42(c). The directive sought by LB Railco, based on its filing of a Notice of Exemption, might prevent the Board from receiving and considering information relating to the validity of the information in LB Railco's filings.

Establishing a cut-off date for submissions concerning this project would also be inconsistent with the very basis for the Board's Decision of November 22, 2002, in which the Board stayed the Notice of Exemption. The Board stated in the Decision that the Notice contained "insufficient information to enable the Board to determine the extent to which environmental review is required." The Board itself may conclude, after receiving LB Railco's forthcoming reply, that further information or clarification is needed, whether from LB Railco or from other parties. The directive sought by LB Railco would potentially tie the Board's hands and preclude it from obtaining all of the information that it needs to determine the status of this project as a rail transportation facility, the validity of LB Railco's assertions of federal preemption, and the need for an environmental assessment and/or an environmental impact statement.

The Board's standard procedures impose sufficient controls on the filing of documents by parties. For example, 49 CFR 1104.13(c) does not permit a reply to a reply. If additional documents that are allowed by the Board's regulations are filed with the Board after LB Railco has filed its reply to the outstanding motions and petitions for action by the Board on the Notice of Exemption, LB Railco will have the period allowed by the Board's regulations to prepare and file an additional reply to such subsequent filings. LB Railco can hardly argue that it is disadvantaged by having further opportunities to advocate on behalf of its project.

LB Railco refers to the "confusion" engendered by recent filings. LB Railco's own filings have been ambiguous in their procedural posture. LB Railco asserts in its January 14th letter that it "never filed a motion to lift the stay." Technically, its prior filing (the "Reply" filed on December 10th) was not styled as a "motion," but the opening sentence of the Reply sought precisely that action from the Board: "LB Railco (the Petitioner) requests that the Board deny the two pending motions and lift the stay imposed on its authorization to operate by the Board's order" (Emphasis added.) Further, the Verification signed by William W. Gay (page 21 of the Reply) states in part: "I have read the motion to lift the Stay and the materials in opposition to the Motions of the Massachusetts Department of Environmental Protection and the Town of Millbury" (Emphasis added.)

CERTIFICATE OF SERVICE

I hereby certify that I have on this 16th day of January, 2003 served copies of the foregoing upon the following parties of record in this proceeding by facsimile and first-class mail in accordance with the rules of practice of the Surface Transportation Board:

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Dated: January 16, 2003


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